



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R09-OAR-2015-0280; FRL-9947-70-Region 9]**

#### **Revisions to California State Implementation Plan; Bay Area Air Quality Management**

#### **District; Stationary Source Permits**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing a limited approval and limited disapproval of revisions to Regulation 2, Rules 1 and 2 for the Bay Area Air Quality Management District (BAAQMD or District) portion of the California State Implementation Plan (SIP) submitted on April 22, 2013. These revisions consist of significant updates to rules governing the issuance of permits for stationary sources, including review and permitting of major sources and major modifications under parts C and D of title I of the Clean Air Act (CAA). Under the authority of the CAA, this action simultaneously approves a local rule that regulates permit requirements for stationary sources and directs the BAAQMD to correct rule deficiencies.

**DATES:** These rules will be effective on **[Insert date 30 days after publication in the Federal Register]**.

**ADDRESSES:** The EPA has established docket number EPA-R09-OAR-2015-0280 for this action. Generally, documents in the docket for this action are available electronically at <http://www.regulations.gov> or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105-3901. While all documents in the docket are listed at

<http://www.regulations.gov>, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Shaheerah Kelly, EPA Region 9, (415) 947-4156, [kelly.shaheerah@epa.gov](mailto:kelly.shaheerah@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms “we,” “us,” and “our” refer to the EPA.

## **TABLE OF CONTENTS**

- I. Proposed Action
- II. Summary of Public Comments and EPA Responses
- III. EPA Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Review

## **DEFINITIONS**

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The word or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The initials *ATC* mean or refer to the authority to construct permit.

(iii) The word or initials *BAAQMD* or *District* mean or refer to the Bay Area Air Quality Management District.

(iv) The initials *CFR* mean or refer to Code of Federal Regulations.

(v) The initials or words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.

(vi) The initials *ERCs* mean or refer to Emission Reduction Credits.

(vii) The initials *FLM* mean or refer to Federal Land Manager.

(viii) The initials *FR* mean or refer to Federal Register.

(ix) The initials *NSR* mean or refer to New Source Review.

(x) The initials *PM<sub>2.5</sub>* mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 2.5 micrometers (fine particulate matter).

(xi) The initials *PSD* mean or refer to Prevention of Significant Deterioration.

(xii) The initials *PTE* mean or refer to potential to emit

(xiii) The initials *SIP* mean or refer to State Implementation Plan.

(xiv) The initials *SO<sub>2</sub>* mean or refer to sulfur dioxide.

(xv) The initials *TSD* mean or refer to the technical support document for the proposed action.

## I. Proposed Action

On August 28, 2015, the EPA proposed a limited approval and limited disapproval of the rules listed in Table 1 that were submitted for incorporation into the California SIP. 80 FR 52236 (Aug. 28, 2015). Our detailed analysis of these rules is provided in the TSD and Federal Register notice for the proposed rulemaking for this SIP revision approval action.

TABLE 1—SUBMITTED NSR RULES

| Regulation & Rule #        | Rule Title                    | Adopted /Amended | Submitted |
|----------------------------|-------------------------------|------------------|-----------|
| Regulation 2, Rule 1 (2-1) | Permits, General Requirements | 12/19/12         | 4/22/13   |

|                            |                            |          |         |
|----------------------------|----------------------------|----------|---------|
| Regulation 2, Rule 2 (2-2) | Permits, New Source Review | 12/19/12 | 4/22/13 |
|----------------------------|----------------------------|----------|---------|

We proposed a limited approval because we determined that these rules strengthen the SIP and are largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions conflict with CAA section 110, including Parts C and D, and the regulations implementing those laws. The disapproved provisions include the following:

1. The definitions of “agricultural source” in Section 2-1-239 and “large confined animal facility” used in Section 2-1-424 rely on other definitions and provisions in District rules that are not SIP approved. (See our evaluation of Sections 2-1-239 and 2-1-424 in section 6.1.2 of the TSD.)

2. Section 2-1-234, subparagraph 2.2, is deficient because it does not satisfy the PSD provisions at 40 CFR 51.166(a)(7) and 51.166(r)(6) & (7), which require PSD programs to contain specific applicability procedures and recordkeeping provisions. (See our evaluation of Section 2-1-234 in sections 6.1.2 and 7.2.2 of the TSD.)

3. The same deficiency discussed above for the PSD provisions applies to the nonattainment NSR provisions. Section 2-1-234, subparagraph 2.1, does not satisfy the requirements of 51.165(a)(2) and 51.165(a)(6) & (7), which require nonattainment NSR programs to contain specific applicability procedures and recordkeeping provisions. (See our evaluation of Section 2-1-234 in sections 6.1.2 and 7.3.12 of the TSD.)

4. The definition of the term “PSD pollutant” as defined in Section 2-2-223, which is used in place of the federal definition for the term “regulated NSR pollutant,” is deficient

because it explicitly excludes nonattainment pollutants. (See our evaluation of Sections 2-2-223 and 2-2-224 in sections 6.2.2 and 7.2.3 of the TSD.)

5. Section 2-2-305 does not require written approval of the Administrator prior to using any modified or substituted air quality model as provided in subsection 3.2.2 of 40 CFR 51, appendix W. (See our evaluation of Section 2-2-305 in sections 6.2.3 and 7.2.15 of the TSD.)

6. Section 2-2-611 does not include the requirement regarding “any other stationary source category which as of August 7, 1980, is being regulated under section 111 or 112 of the Act” in the list of source categories that must include fugitive emissions to determine whether a source is a major facility. (See our evaluation of Section 2-2-611 in sections 6.2.6 and 7.3.10 of the TSD.)

7. Section 2-2-401.4 only requires a visibility analysis for sources that are located within 100 km of a Class I area, rather than for any source that “may have an impact on visibility” in any mandatory Class I Federal Area, as required by 40 CFR 51.307(b)(2). (See our evaluation of Section 2-2-401.4 in sections 6.2.4 and 7.3.9 of the TSD.)

8. Section 2-2-411 pertaining to Offset Refunds does not contain any timeframe for obtaining an offset refund. (See our evaluation of Section 2-2-411 in section 6.2.4 of the TSD.)

9. The Offset Program Equivalence demonstration required by Section 2-2-412 does not provide a remedy if the District fails to make the required demonstration. (See our evaluation of Section 2-2-412 in section 6.2.4 of the TSD.)

10. Subsection 2-2-605.2 allows existing “fully-offset” sources to generate ERCs based on the difference between the post-modification PTE and the pre-modification PTE. Emission reductions intended to be used as offsets for new major sources or major modifications are only creditable if they are reductions of actual emissions, not reductions in the PTE of a

source. (See our evaluation of Section 2-2-605 in sections 6.2.6, 7.3.3, 7.3.13, and 7.3.22 of the TSD.)

11. Subsection 2-2-606.2, as it applies to major modifications, does not require “fully-offset” sources to calculate the emission increases from a proposed major modification based on the difference between the post-modification PTE and the pre-modification actual emissions as required by 40 CFR 51.165(a)(3)(ii)(J). (See our evaluation of Section 2-2-606 in sections 6.2.6 and 7.3.22 of the TSD.)

In addition, we had proposed a limited disapproval of Section 2-2-308. (See our evaluation of Section 2-2-308 in sections 6.2.3 and 7.4.1 of the TSD.) We also proposed to find the rules were deficient because they did not require a demonstration that a new source meet all applicable SIP requirements as required by 40 CFR 51.160(b)(1). (See section 7.4.1 in the TSD.) For the reasons discussed in sections 2.2 and 2.3 of our Response to Comments document, we are not finalizing our proposed disapproval of Section 2-2-308 or the proposed deficiency based on the requirements of 40 CFR 51.160(b)(1).

## **II. Summary of Public Comments and EPA Responses**

Our August 28, 2015 proposed rulemaking provided a 30-day public comment period. The EPA granted a request from BAAQMD to extend the public comment period until November 12, 2015, which is the date the public comment period ended. We received comments from BAAQMD and the California Council for Environmental and Economic Balance (CCEEB).<sup>1</sup> We also received a comment letter from the Sacramento Metropolitan Air Quality Management District (SMAQMD) after the public comment period ended. We received an

---

<sup>1</sup> Each of the comments contained in CCEEB’s comment letter mirrored issues raised in the BAAQMD comment letter, therefore the comment summary provided in this notice does not attribute specific comments to CCEEB. Please see the Response to Comments documents for more information.

anonymous, non-substantive comment letter and a comment letter submitted on behalf of the California Air Pollution Control Officers Association (CAPCOA) that was withdrawn during the comment period. Our Response to Comments document in the docket for this action contains a summary of the comments and the EPA's responses. The full text of the public comments, as well as all other documents relevant to this action, are available in the docket (visit <http://www.regulations.gov> and search for Docket ID: EPA-R09-OAR-2015-0280). Below, we briefly summarize the significant comments and our responses to the major issues raised by commenters.

**Comment 1:** BAAQMD commented that the CAA is designed to achieve “cooperative federalism”, and that the EPA should defer to the District's policy choices on how to implement its NSR program.

**Response 1:** The EPA understands its role under the cooperative federalism approach established under the CAA and we have applied the appropriate standard in reviewing the BAAQMD's NSR rules.

**Comment 2:** BAAQMD disagrees with the EPA's limited disapproval of Section 2-2-308 as it relates to satisfying the requirements in 40 CFR 51.160(b).

**Response 2:** We are not finalizing our limited disapproval of Section 2-2-308 as it relates to 40 CFR 51.160(b)(2) for the reasons discussed in our Response to Comments document. Accordingly, the EPA is finalizing approval of Section 2-2-308.

**Comment 3:** BAAQMD disagrees with the EPA's limited disapproval of the District NSR rules because it did not contain a prohibition on the issuance of an ATC if the project does not meet all applicable requirements of the control strategy as required in 40 CFR 51.160(b)(1). BAAQMD commented that Sections 2-1-304 and 2-1-321 satisfy this requirement.

**Response 3:** The EPA is not finalizing our proposed limited disapproval of this issue because Section 2-1-304 satisfies the control strategy requirement in 40 CFR 51.160(b)(1). The EPA is finalizing approval of Section 2-1-304 as satisfying requirement in 40 CFR 51.160(b)(1).

**Comment 4:** BAAQMD disagrees with the EPA's proposed limited disapproval of Section 2-2-602.2 for determining the amount of offsets required for major modifications that will be constructed at major sources that have previously provided offsets equal to the source's PTE when the modification will not increase the PTE of the source.

**Response 4:** The EPA is finalizing our limited disapproval regarding this issue. 40 CFR 51.165(a)(3)(ii)(J) directs SIPs to include rules to ensure that the total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with section 173 of the Act shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification . This provision requires providing offsets for each major modification at a major source in an amount equal to the difference between pre-modification actual emissions and post-modification PTE.

**Comment 5:** BAAQMD disagrees with the EPA's proposed limited disapproval of the PTE-to-PTE calculation method for determining the amount of ERCs generated from sources that have provided offsets up to their full PTE and that are being shut down.

**Response 5:** The EPA is finalizing its limited disapproval on this issue because offsets are required to be generated from reductions in actual emissions consistent with CAA section 173(a) and (c) and 40 CFR 51.165(a)(3).

**Comment 6:** BAAQMD comments that the EPA cannot require nonattainment offsets for SO<sub>2</sub> because the San Francisco Bay Area is not designated as nonattainment for SO<sub>2</sub>.



**Response 6:** The EPA is finalizing its limited disapproval on this issue because 40 CFR 51.165(a)(1)(xxxvii) specifies that sulfur dioxide is a precursor in all PM<sub>2.5</sub> nonattainment areas and the BAAQMD is designated nonattainment for the 2006 PM<sub>2.5</sub> National Ambient Air Quality Standards.

**Comment 7:** BAAQMD comments that the EPA's visibility regulations at 40 CFR 51.307(b) do not specify what projects "may have an impact" on visibility at Federal Class I areas, therefore it is acceptable to use a 100-km radius to meet the requirement.

**Response 7:** The EPA is finalizing its limited disapproval on this issue because the EPA's visibility regulations require a new major source or major modification that "may have an impact on visibility" at a Federal mandatory Class I area to conduct a visibility analysis on a case-by-case basis in consultation with the applicable FLM.

**Comment 8:** BAAQMD requests that the EPA confirm that the limited approval and limited disapproval action will make the BAAQMD's NSR rules as a whole part of the California SIP and federally enforceable under the CAA.

**Response 8:** Regulation 2, Rules 1 and 2 will become the federally enforceable NSR program in the SIP for BAAQMD subject to an obligation to correct rule deficiencies listed in Section I of this Federal Register document.

### **III. EPA Action**

For the reasons provided in our proposed rule and above in response to comments, pursuant to section 110(k) of the CAA, the EPA is finalizing a limited approval and limited disapproval of the submitted BAAQMD rules, listed in Table 1 above, into the California SIP. Regulation 2, Rules 1 and 2 will become the federally enforceable NSR program in the SIP for BAAQMD subject to an obligation to correct the rule deficiencies listed in Section I of this

Federal Register document. We are finalizing a limited approval because incorporating the BAAQMD permitting rules will strengthen and update the BAAQMD portion of the California SIP. We are finalizing our limited disapproval because some of the BAAQMD permitting rules do not comply with federal NSR requirements.

We are finalizing our action as proposed, except for the limited disapprovals regarding Sections 2-2-308 and the requirements of 40 CFR 51.160(a) and (b). Accordingly, the EPA will finalize approval of these provisions.

Our limited disapproval action will trigger an obligation for the EPA to promulgate a Federal Implementation Plan under CAA section 110(c) unless California corrects the deficiencies that are the bases for the limited disapproval, and the EPA approves the related rule revisions, within 24 months of the effective date of this final action. In addition, sanctions will be imposed unless the EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of this action. These sanctions will be imposed under section 179 of the Act and 40 CFR 52.31.

The District has been implementing the federal PSD permitting program based on a delegation agreement with the EPA pursuant to 40 CFR 52.21(u).<sup>2</sup> Despite limited deficiencies, this final action approving the District's PSD permitting program into the SIP means that the District will be the PSD permitting authority on the effective date of this final action. Concurrent with the EPA's approval of the District's rules, all PSD permits for sources located in the BAAQMD issued directly by the EPA or under the PSD delegation agreement are being

---

<sup>2</sup> On June 21, 2004, the EPA issued a PSD delegation agreement, which was updated on January 20, 2006, February 4, 2008, and March 9, 2011.

transferred to the District. A list of these EPA-issued permits is included in the docket for this rulemaking action.

#### **IV. Incorporation by Reference**

The EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the BAAQMD rules described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available electronically through <http://www.regulations.gov> and in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

#### **V. Statutory and Executive Order Review**

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

##### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

##### *B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

##### *C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Coordination with Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

*H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population*

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

*K. Congressional Review Act (CRA)*

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

*L. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after the date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial

review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Air pollution control, Carbon monoxide, Environmental protection, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur Oxides, Volatile organic compounds.

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

Dated: June 3, 2016.

Alexis Strauss,  
Acting Regional Administrator,  
Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52 -- [AMENDED]**

1. The authority citation for part 52 continues to read as follows:

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

**Subpart F – California**

2. Section 52.220 is amended by adding paragraphs (c)(182)(i)(B)(7) and (c)(199)(i)(A)(9) and (c)(202)(i)(A)(2) and (c)(429)(i)(E)(1) and (2) to read as follows:

**§52.220 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(182) \* \* \*

(i) \* \* \*

(B) \* \* \*

(7) Previously approved on January 26, 1999 in paragraph (c)(182)(i)(B)(6) of this section and now deleted with replacement in (c)(429)(i)(E)(1), Regulation 2, Rule 1 adopted on November 1, 1989.

\* \* \* \* \*

(199) \* \* \*

(i) \* \* \*

(A) \* \* \*

(9) Previously approved on January 26, 1999 in paragraph (c)(199)(i)(A)(8) of this section and now deleted with replacement in (c)(429)(i)(E)(2), Regulation 2, Rule 2 adopted on June 15, 1994.

\* \* \* \* \*

(202) \* \* \*

(i) \* \* \*

(A) \* \* \*

(2) Previously approved on April 3, 1995 in paragraph (c)(202)(i)(A)(I) of this section and now deleted with replacement in (c)(429)(i)(E)(I), Rule 2-1-249, adopted on June 15, 1994.

\* \* \* \* \*

(429) \* \* \*

(i) \* \* \*

(E) Bay Area Air Quality Management District.

(I) Regulation 2, "Permits," Rule 1, "General Requirements," adopted on December 19, 2012.

(2) Regulation 2, "Permits," Rule 2, "New Source Review," adopted on December 19, 2012.

\* \* \* \* \*

3. Section 52.270 is amended by adding paragraph (b)(16) to read as follows:

**§52.270 Significant deterioration of air quality.**

\* \* \* \* \*

(b) \* \* \*

(16) The PSD program for the Bay Area Air Quality Management District (BAAQMD), as incorporated by reference in §52.220(c)(429)(i)(E)(2), is approved under Part C, Subpart 1, of the Clean Air Act. For PSD permits previously issued by EPA pursuant to §52.21 to sources located in the BAAQMD, this approval includes the authority for the BAAQMD to conduct general administration of these existing permits, authority to process and issue any and all subsequent permit actions relating to such permits, and authority to enforce such permits.



\*

\*

\*

\*

\*

[FR Doc. 2016-17904 Filed: 7/29/2016 8:45 am; Publication Date: 8/1/2016]